

**BUSINESS DEVELOPMENT FINANCIAL ASSISTANCE PROGRAM GRANT  
AGREEMENT**

**THIS BUSINESS DEVELOPMENT FINANCIAL ASSISTANCE PROGRAM GRANT AGREEMENT** (the "Agreement") is made this 4<sup>th</sup> day of ~~September~~<sup>October</sup>, 2017, by and between

**CITY OF ROCHESTER** (the "City")

City Hall  
30 Church Street, Room 005A  
Rochester, New York 14614

-and-

**FUNK 'N WAFFLES 3, LLC** ("Grantee")

204 N. Water Street  
Rochester, New York 14604

**Section 1: Program**

Grantee has applied for financing pursuant to the City's Business Development Financial Assistance Grant Program and the City has approved the request pursuant to the terms and conditions of this agreement.

**Section 2: Grantee**

A. The Grantee does not have tax-exempt status under any law, regulation, ruling or statute, including but not limited to Federal Internal Revenue Service rulings.

B. Grantee is a limited liability company organized under the Laws of New York State, is in good standing with those laws, has the ability and authority to enter into this transaction, the necessary limited liability company activities have occurred to permit the undersigned to execute this Agreement on behalf of Grantee, and the attached print out from <http://www.dos.ny.gov> is true and accurate.

**Section 3: Status of Premises**

A. The address of the Premises is 204 North Water Street, Rochester, New York 14604, ("Premises") which is a tax producing parcel located in the City.

B. Grantee rents the Premises pursuant to a lease containing a lease term which is equal to or greater than the term of this Agreement (the "Lease") from the owner of the Premises pursuant to a deed filed in the Office of the Monroe County Clerk. Grantee has submitted the Lease to the City for review.

C. To the best of Grantee's knowledge, there are currently no property code violations against the Premises.

D. To the best of Grantee's knowledge, all real property taxes and other related assessments and embellishments levied by the City of Rochester and County of Monroe are current.

#### Section 4: Grant Amount

The Grant Amount shall be Thirty Thousand Dollars (\$30,000), which may be reduced by the City if the actual costs upon completion of the Project are less than the Project Cost, as set forth below.

#### Section 5: Grant Term

The Grant Term shall be five (5) years from the date of disbursement.

#### Section 6: Grant Funding Source

Community Development Block Grant Funds were used to fund this Grant.

#### Section 7: The Project

A. The Project consists of the renovations and repairs to the Premises, including the buildout of the kitchen, club bar and hall bar, at a cost of \$115,000, the purchase of FF&E and signage ("FF&E") in the amount of \$50,000 and additional renovations, repairs and construction in the amount of \$40,000 (the "Project").

B. Project Cost: The total Project Cost is \$205,000.

C. Amendment of the Project: Any amendment to the Project must be approved in writing by the City before any work included in the amended Project has commenced.

D. Project Reports: Copies of all reports, studies and expert opinions generated from the Project, if any, shall be sent to the City.

E. If Program Funds are not disbursed within twelve (12) months from the date of this Agreement, the Agreement shall be terminated unless the disbursement period is extended in writing by the City in its sole and absolute discretion.

#### Section 8: Employment

Grantee represents to the City the Project will enable it to create ten (10) full time equivalent ("FTE") jobs at the Premises (any part-time jobs shall be reported as FTE's) within three (3) years of the date hereof. Grantee shall use their best efforts to hire applicants who are City residents and are low/moderate income for any new jobs at the Premises, as long as such applicants meet the qualifications established by the Grantee for its job openings. Grantee will

work with the appropriate City of Rochester/County of Monroe job training agency to recruit, interview and hire job applicants. Grantee shall give first priority to hiring City of Rochester residents for the new FTE positions created by virtue of the Project.

Section 9: Disbursement of Program Funds

A. Program Funds shall be disbursed only after Grantee certifies that:

- 1.) All of the Pre-disbursement requirements have been met;
- 2.) Program Funds will be used only for the Project and for no other purpose; and
- 3.) If the proceeds of this Grant fund new construction or renovations, additions or alterations to existing facilities, Grantee has complied with: a.) all applicable provisions of law, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act of 1968, and the Fair Housing Act; and b.) all rules, regulations and forms as may be established by the City's Commissioner of Neighborhood and Business Development to assure compliance with the provisions of Section 39-229 of the Rochester City Code.

B. Prior to disbursement of Program Funds, Grantee shall agree that any information contained in documents submitted by Grantee to the City to obtain this Grant may not be modified without the written consent of the City. Grantee shall inform the City of any material adverse change in Grantee's financial condition or obligations. In the event that there is any material adverse change in the financial condition or obligations of Grantee prior to the Disbursement closing, the City may, at its sole and absolute discretion, terminate this Agreement without disbursing the Program Funds and any and all rights of Grantee shall terminate.

C. Any changes in Project tasks or Project Costs must be agreed to in advance in writing by the City.

D. The following shall be Pre-disbursement Requirements which the City must receive prior to the disbursement of Grant Funds.

1. Proof that Grantee has obtained all necessary permits, licenses or certificates as well as any other items required by federal, state, county or local laws, codes and ordinances for the Project.
2. Proof that the Project has been completed through invoices, receipts and other documentary evidence including, but not limited to, copies of the front and back of cancelled checks, such proof to be satisfactory to the City, evidencing expenditures of the total Project Cost;
3. Proof in the form of invoices, receipts and other documentary evidence including, but not limited to, copies of the front and back of cancelled checks, such proof to be satisfactory to the City, evidencing Grantee has invested \$75,000 cash equity into the Project;

4. Written consent of the members of Grantee with Articles of Organization, Operating Agreement and Certificate of Good Standing attached;
5. Proof that the FF&E and signage has been delivered and installed at the Premises;
6. A copy of lease between Grantee and Landlord for the Premises evidencing a term of no less than the Loan term.
7. Executed Hiring Preference Agreement with the City of Rochester;
8. Proof the Chase Line of Credit loan in the amount of \$100,000 has closed;
9. Proof of the following insurance coverage:
  - a. Fire Insurance with extended coverage on real and personal property for full replacement value covering the Premises and all personal property of Borrower and having City of Rochester, 30 Church Street, Room 005A, Rochester, New York 14614 be named as an additional insured; and
  - b. general liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, that City of Rochester, 30 Church Street, Room 005A, Rochester, New York 14614 be named as an additional insured using ISO Additional Insured Endorsement CG2010; and
  - c. Worker's Compensation carried by Borrower during the full loan Term; and
  - d. Builder's Risk and Worker's Compensation carried by either the contractors or Borrower during the Project.

E. When the City disburses the Grant Funds, the City may disburse directly to Grantee in a single, lump-sum payment, or the City may disburse any applicable portion of the Grant amount by check(s) jointly payable to Grantee and any unpaid vendor(s).

#### Section 10: Conditions Subsequent

A. Grantee shall provide a quarterly report to the City, for the periods ending on each calendar quarter, setting forth the number of full-time equivalent (FTE) jobs created and/or retained by Grantee during the reporting period, the job titles of each such job, and the wage level of each such job. Any part-time jobs shall be reported as FTE's. An FTE job is defined as a position filled by one employee of Grantee, working at least thirty-five (35) hours per week or two or more part-time positions that when combined work at least thirty-five (35) hours per week. The report shall be provided to the City within thirty (30) days subsequent to each such reporting period.

B. Grantee shall provide the following to the City, as soon as available and in any event within thirty (30) days after the end of each fiscal year of Grantee during the Term hereof, Grantee's annual financial statements as of the end of such fiscal year, showing for such fiscal

year: a statement of income and retained earnings, a balance sheet, a statement of cash flows, and a statement of change in financial position of Grantee. All such information required above shall be in reasonable detail, certified to the City by an officer of Grantee, stating in comparative form the respective figures for the corresponding date and period in the prior fiscal year and prepared in accordance with GAAP (Generally Accepted Accounting Principles).

#### Section 11: Default

If at any time during the Project there is a change in any information submitted by Grantee to the City to obtain this Grant, Grantee shall inform the City immediately. Failure to inform the City shall be deemed a default under this Grant Agreement.

If it is determined by the City that false information has been provided to the City by Grantee or that monies received have not been used as required by this Agreement, this Agreement shall be deemed to be in default.

If Grantee defaults on any of the terms and conditions of this Grant Agreement, including but not limited to the Conditions of Default set forth below, it is understood that:

- a.) Grantee shall forfeit all rights and privileges under the Program and this Grant Agreement shall terminate without further obligation on the part of the City.
- b.) The City shall be entitled to any collection costs, including but not limited to reasonable attorney's fees expended to recover monies paid.
- c.) Unless otherwise provided in this Grant Agreement, all claims, counter-claims, disputes and other matters in question between the City and Grantee arising out of, or relating to, this Agreement or the breach of it shall be decided in Supreme Court, Monroe County.
- d.) Any monies received under the Program, together with interest thereon at the current maximum legal rate per annum, shall immediately be due and payable to the City. The City shall be entitled to any collection costs, including but not limited to reasonable attorney's fees expended to recover monies paid. For purposes of legal action, the amount due shall be considered a sum certain, and this Grant Agreement deemed a promissory note in the amount due, with Grantee as obligor, and the City as obligee.

#### Section 12: Events of Default

The occurrence of any of the following events during the Grant Term shall be an Event of Default:

1. If Grantee fails to perform or comply with any covenant or term of this Agreement or any other document executed by Grantee in connection with receiving the Grant, and such failure shall continue for a period of thirty (30) days after City's issuance of written notice of the failure to perform and/or comply and requiring such failure to be remedied;
2. If Grantee fails to provide any quarterly employment reports or the annual financial statements required above as Conditions Subsequent;

3. If Grantee either ceases or relocates all or substantially all of its operations from the Premises to a location:
  - a. outside of the boundaries of the City of Rochester; or
  - b. within the boundaries of the City of Rochester, without the prior written consent of the City;
4. Upon the dissolution, bankruptcy or insolvency of Grantee;
5. If the Lease for the Premises is terminated by either Grantee or the Landlord at any time during the term of this Grant Agreement;
6. If Grantee fails to maintain the property hazard and business liability insurance coverage set forth above for the full term of the grant;
7. If Grantee fails to correct, or cause to be corrected, any violation of any applicable federal, state and local governmental laws, rules, and regulations, including but not limited to the building, zoning and property codes of the City of Rochester, New York, governing the use, repair, reconstruction, construction, environmental condition and maintenance of the Premises (including all buildings thereon), set forth in any notice, order, or any other communication from a government or governmental entity, within the time limits set forth for compliance;
8. If Grantee fails to pay, or cause to be paid, in full, when due, all County of Monroe and/or City of Rochester/City School District ad valorem real property taxes, assessments, charges, interest, and fees due for the Premises, and/or payment in lieu of such County of Monroe and/or City of Rochester/City School District ad valorem real property taxes, assessments, charges, interest, and fees due for the Premises pursuant to any agreement(s) by COMIDA (also known as "PILOT" payments), if such payment is the responsibility of Grantee;
9. In the event of any default by Grantee which causes acceleration of any document evidencing any other loan or grant obtained by Grantee for the Project.

#### Section 13: Notices

Any notice, demand or request required or agreed to be given under this Agreement by either party shall be sufficiently given or served if in writing and signed by the party giving it and mailed by certified mail, return receipt requested, addressed to the party to be notified to the address set forth above, or to such other address as the parties may from time to time designate by giving notice thereof in writing. Service shall be complete upon such mailing except in case of a notice to change an address in which case service shall be complete when the notice is received by the addressee.

#### Section 14: Grantee Records

Grantee agrees to submit to the City any Project records it may have which were not previously delivered to the City, including but not limited to records regarding the amounts received and expended, the entities working on the Project, and the completion dates of the Project.

#### Section 15: Amendment of Grant Agreement:

Any amendment of this Grant Agreement must be in writing and must be executed by both parties.

#### Section 16: Indemnification

Grantee hereby agrees to indemnify and hold harmless the City, its agents, representatives and employees, of any claims of whatsoever nature for:

- a.) damages by reason of injury to persons or damage to property occurring on the Premises, as a result of the Project or of the actions, negligence, or omissions of Grantee or any successor, assignee, agent, servant, or independent contractor of Grantee; and
- b.) damages by reason of injury to persons or damage to property occurring as a result of the Project or any activity undertaken on the Premises, by Grantee or any successor, assignee, agent, servant, or independent contractor of Grantee.
- c.) any and all liability for injury to persons or to property and any expense the City may incur, including but not limited to reasonable attorney fees and experts, which liability and expense result from the presence of Hazardous Substances in, on, or beneath the Premises, and/or removal or other remediation of any such Hazardous Substances, to the extent that the presence or release of Hazardous Substances results from or arises out of Project or out of the activities of Grantee, its agents, employees, contractors, and invitees, and except to the extent the presence or release of Hazardous Substances results from or arises out of the activities of the City, its agents, employees, contractors, invitees.

For purposes of this Grant Agreement, the following terms shall have the indicated meanings:

"Environmental Laws" mean all federal, state and local environmental, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

"Hazardous Substance" means, without limitation, any flammable explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response,

Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Law or any other currently applicable Environmental Law and the regulations promulgated thereunder.

#### Section 17: Federal Regulations

Borrower acknowledges and agrees that Borrower shall comply with all applicable provisions of the following:

All applicable Federal regulations governing the use of the proceeds of the loan, funded by HUD to the City, including but not limited to compliance with (1) "Section 3 Affirmative Action: requirements set forth in 24 Code of Federal Regulations Part 135, and (2) the Davis-Bacon Act, as amended, and (3) the regulations of the Community Development Block Grant (CDBG) program set forth in 24 Code of Federal Regulations Part 570. The Davis-Bacon Act, as amended, requires that all laborers and mechanics employed by contractors and/or subcontractors in the performance of construction and/or installation of equipment/materials financed in whole or in part by Federal funds (which includes the loan proceeds) shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. However, if no construction is funded by the loan proceeds, then in the event that the cost of installation of any equipment/materials whose purchase is financed in whole or in part with the proceeds of the grant is less than 14.8% of the cost of the applicable item(s) installed by each contractor, then the Davis-Bacon Act, as amended, does not require the payment of "prevailing wages."

Upon completion of the expenditure of proceeds, Borrower shall document to the reasonable satisfaction of the City all expenditures of loan proceeds, and if applicable, including the cost of all equipment/material purchased in whole or in part with loan proceeds and the cost of installation of all items so purchased. All applicable installation costs shall be separately stated and documented. If the City determines that the Davis-Bacon Act, as amended, requires payment of "prevailing wages" for any such installation, or for any aspect of the Project not funded directly by the City, Borrower shall promptly comply with such requirements.

#### Section 18: Assignability

This Grant Agreement is not assignable.

#### Section 19: Compliance with All Laws

Grantee agrees that during the performance of the Project, Grantee, and all employees shall strictly comply with all local, state, or federal laws, ordinances, rules or regulations controlling or limiting in any way the performance of Project. Furthermore, each and every provision of law and clause required by law to be inserted in this Grant Agreement shall be deemed to be inserted



herein, and this Grant Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any such provision is not inserted, or is not properly inserted, then upon the application of either party this Grant Agreement shall be forthwith physically amended to make such insertion or correction.

Section 20: Choice of Law

This Grant Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

*[signature page to follow]*

IN WITNESS WHEREOF, in consideration of the terms and conditions, the parties herein have executed this Grant Agreement on the date first written above.

**CITY OF ROCHESTER**

BY: 

Name: Baye' M. Muhammad

Title: Commissioner, Neighborhood & Business Development

**FUNK 'N WAFFLES 3, LLC**

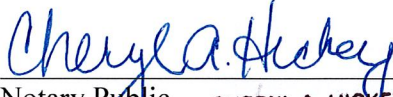
BY: 

Name: Adam Gold

Title: Sole Member

STATE OF NEW YORK}  
COUNTY OF MONROE} SS:

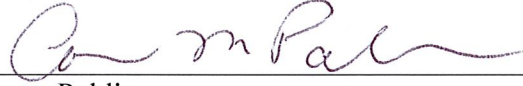
On the 4 day of ~~September~~ <sup>October</sup>, 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared **Baye' M. Muhammad**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public **CHERYL A. MICKEY**  
Notary Public, State of New York  
No. 01HI6169414  
Qualified in Monroe County  
Commission Expires June 25, 2019



STATE OF NEW YORK}  
COUNTY OF MONROE} SS:

On the 4<sup>th</sup> day of ~~September~~ <sup>October</sup>, 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared **Adam Gold** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**CORINNE M. PALERMO**  
Notary Public, State of New York  
Monroe County  
Commission Expires August 27, 2019